



TOWN OF WALPOLE
COMMONWEALTH OF MASSACHUSETTS
OFFICE OF COMMUNITY DEVELOPMENT

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To: Zoning Board of Appeals

From: Ashley Clark
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Date: January 20, 2021

Subject: Burns Avenue Administrative Appeal

Staff met with the Building Commissioner and Town Counsel to discuss the four components of the Administrative Appeal of the Building Commissioner's cease and desist order dated November 30, 2020 stating that zoning violations occurred at 48 Burns Avenue.

1) Is there an active comprehensive permit issued for 48 Burns Avenue?

The comprehensive permit is not active as it is currently under appeal with the Housing Appeals Committee.

Conclusion: No zoning relief or waivers are active on the site.

2) What relationship does the DEP order of conditions have to the Walpole Zoning By-Law?

Both zoning and conservation regulations must be satisfied to commence work. While Wall Street Development does have an active order of conditions, it must also meet the zoning by-law to do work that is not by-right.

Conclusion: Work that is not by-right under zoning shall not take place.

3) Is the site excavation and fill work a by-right activity?

According to the Applicant's own admission, approximately 150 cubic yards of additional fill material was "trucked to the site...this additional fill will be spread to level the existing grade on the property." Section 5-D(3)A of Zoning By-law allows for the excavation or filling operations which will involve the excavation or filling of less than one hundred (100) cubic yards of earth per year for a residential use.

Conclusion: The Applicant has exceeded this use and has therefore created a zoning violation.

4) Is the site clearing work being completed a by-right activity?

The Zoning By-Law in Section 5A(1)C states that “**very limited** clearing and excavation is permitted to obtain necessary survey and engineering data or other activities required to secure necessary permits.” In the opinion of the Building Commissioner, the work being done exceeds this standard of “very limited”.

Conclusion: The site clearing work exceeds the by-right activity and has therefore created a zoning violation.

In Summary: There is no active zoning permit on the site; zoning regulations must be met in addition to any other local regulations, including an order of conditions; the site clearing and excavation work exceeds the by-right uses provided for in the Zoning By-law. Therefore, the cease-and-desist order issued by the Building Commissioner on November 30, 2020 to Wall Street Development Corp. was properly issued to require Wall Street Development to stop all site work, clearing, stockpiling and earth removal.